

Whatever view is taken of the evidence, I am satisfied that it did not justify a conviction for criminal breach of trust; and even if I were disposed to accept the prosecution story *in toto* (which I am not), this is not a case in which I should consider altering the conviction to one of lesser offence. The complainant was represented at the trial by an advocate to conduct the prosecution, who should have considered what offence the evidence would disclose.

The appeal is allowed and the conviction quashed.

Conviction quashed.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

April 11, 1938.

[SINGAPORE SUIT No. 5 of 1937]

A. E. BEAVIS Vs. FOO CHEE FONG.

Costs—principles of taxation.

A Plaintiff obtained judgment against a Defendant for costs on both claim and counterclaim. The amount recovered on the claim was under \$5,000; but the amount of the counterclaim exceeded \$5,000.

Held that the Plaintiff was entitled to costs on the claim on the lower scale only; and to costs on the counterclaim on the higher scale, but that the counterclaim should bear only the amount by which the costs of the proceedings have been increased by it.

Medway Oil & Storage Co. Ltd. v. Continental Contractors Ltd. & ors. (1929) A.C. 88 followed.

Held also that \$500 is an extreme figure for the getting up fee where the amount at issue is less than \$5,000; though in exceptional cases this figure may be exceeded.

Held also that in allowances for attendances in Court for a "day" (item 189 in Schedule C to the Rules of the Supreme Court) a day covers the normal sitting of the Court from 10.30 or 11.00 a.m. to 4 p.m. and if this period is substantially (but not merely slightly) exceeded an extra allowance should be made proportionately.

Held further that where an order allows a party a proportion only of his taxed costs e.g. one half of his taxed costs generally he is to be allowed only one half of his profit costs and one half of his disbursements.

SUMMONS IN CHAMBERS.

Mark Morrison for Plaintiff.

John Laycock for Defendant.

In this case the Plaintiff brought an action for damages claiming a sum greatly in excess of \$5,000; and the Defendant counterclaimed for a sum also admitted to be in excess of that amount.

The case went to the Court of Appeal and as a result of the appeal the Plaintiff obtained Judgment against the Defendant for \$4,200 on the claim and Judgment on the counterclaim. The Court of Appeal allowed the plaintiff one half of his taxed costs of the claim and counterclaim.

The Plaintiff brought in objections to the taxation of his bill.

Cur. Ad. Vult.

TERRELL, J.—The objections by the Plaintiff to the taxation of his Bill fall under two heads:—

- (a) the allowance of \$1,020 for instruction for trial, etc., and
- (b) the hearing fees on the seven days of the hearing.

As regards (a), it would appear that the learned Registrar ruled that the claim, upon which \$4,200 was recovered, should be taxed on the lower scale, and the counterclaim, in which the defendant failed to recover \$16,000, on the higher scale. This ruling is I think correct. The sum of \$1,020 was allowed as the getting up fee for both claim and counterclaim as a single item. The learned Registrar has however stated that he has allowed \$700 in respect of the claim and \$320 in respect of the counterclaim. The getting up fee should bear some relation to the amount, and the importance of the issue, involved, and generally speaking \$500 is an extreme figure for the getting up fee where the amount at issue is less than \$5,000, whatever be the work involved. In exceptional cases this figure may be exceeded as it has in this case. The getting up fee on the counterclaim has been allowed at \$320, and in view of the ruling in *Medway Oil & Storage Co. v. Continent Contractors*, (1929) A.C. p. 88, that the unsuccessful defendant, where a counterclaim is dismissed, should only be called on to pay the amount by which the costs of the original action have been increased, I think it was correct to allow a smaller sum for the getting up fee on the counterclaim, notwithstanding that it was on the higher scale. I might myself have apportioned the \$1,020 somewhat differently, namely \$600 for the claim and \$420 for the counterclaim, but it is entirely a matter of discretion, and the learned Registrar's opinion is just as likely to be correct as my own.

In arriving at the amount of the getting up fee I do not think it desirable to enquire from Counsel the number of days and hours during which he was engaged in the work. I think it is almost impossible to give a correct answer. The proofs of witnesses are of course relevant, and so are the issues of law involved, but I think that a taxing master should be chiefly guided, as I have said, by the amount at stake and the importance of the issues involved. If he attempts to establish an arbitrary scale dependent on the number of days or hours worked, the final result may be either too large or too small and in either case the Registrar's discretion will be unduly fettered.

As regards (b), one of the Plaintiff's objections seems to be that even if the original claim had only been for \$4,200, as soon as a counterclaim for \$16,000 had been presented, counsel's efforts would have been on a higher

scale instead of a lower scale basis. To this proposition I cannot assent. Lawyers, like doctors, by the etiquette of their professions, are expected to do their best for any client whom they are advising, irrespective of the fee that may ultimately be paid. Under no circumstances can a counterclaim on the higher scale basis transform a lower scale claim into a higher scale claim. The apportionment of two-thirds to the claim and one-third to the counterclaim is certainly not open to objection on the Plaintiff's part, and the plaintiff could not reasonably have complained if even a larger proportion had been allocated to the claim and a smaller proportion to the counterclaim. In my view therefore the basis upon which the hearing fees were calculated was correct.

A further point arises as to what is meant by "a day" (item 189 in schedule C). I have always understood that "a day" covers the normal sittings of the Court, i.e. from 10.30 or 11 a.m. to 4 p.m. If this period is exceeded by less than half an hour no extra payment should be allowed upon the principle "de minimis non curat lex." When, however, the usual period is substantially exceeded, I think that an extra allowance per hour can be made in proportion to the rate of the daily fee allowed. The bill of costs should therefore be referred back so that the necessary adjustment may be made.

The only other question is whether the plaintiff being entitled under the Order of the Court of Appeal to half his taxed costs, is to be allowed half his profit costs and his full disbursements. This is merely a matter of interpretation of the order of the Court of Appeal. I feel no doubt that "costs" generally includes disbursements, and that under the Order in question the plaintiff is only entitled to half the disbursements allowed.

Order accordingly.

Solicitor for Plaintiff—*Mark Morrison.*
Solicitors for Defendant—*Braddell Bros.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

April 21, 1938.

RE E. M. ABDULLA AND COMPANY.
EX PARTE HENRY WAUGH AND CO.

[SINGAPORE BANKRUPTCY No. 7 of 1938]

Bankruptcy Ordinance (Cap. 45), s. 3 sub-s.
3—"Debtor"—*Adjudication of absent principal*

An act of bankruptcy must be a personal act or default of the debtor, and cannot be committed through an agent of the person sought to be made bankrupt if such person is not cognizant of or has not authorised the said act. An adjudication order cannot be made against an absent principal in respect of an act of bankruptcy committed by an agent within the Colony of which the principal is not cognizant and which he has not authorised.

Re Chop Ghee Lee, Singapore Bankruptcy No. 362 of 1923, unreported and *re Chop Nam Chiang Long*, (1927) S.S.L.R. 28 followed. *Ex parte Blain*, 12 Ch. D. 522 followed.

MOTION.

Barrett for the petitioning creditors in support of the Motion.

E. B. Williams, Official Assignee, in person.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

McELWAINE, C.J.—This is an application for adjudication orders against E. M. Abdulla and E. M. Abdul Hamid, two of the three partners in the firm of E. M. Abdulla & Company of No. 161 North Bridge Road, Singapore, against which firm I made a receiving order on 4th February, 1938, on the ground that the following act of bankruptcy appeared to have been committed: "that the managing partner of the said E. M. Abdulla & Co. with the intent to delay the creditors of E. M. Abdulla & Company, (1) has departed from his dwelling house (2) has absented himself from his place of business of E. M. Abdulla & Company."

The managing partner above referred to is E. K. Mohamed Ismail whose whereabouts are unknown.

The firm was indebted to Henry Waugh & Company in the sum of \$1,056.02

In an affidavit sworn by J. M. Mohamed Sultan, an employee of the firm, it was sworn that the said E. M. Abdulla and E. M. Abdul Hamed are at present living in India, having authorised their partner E. K. Mohamed Ismail to manage and conduct their business at Singapore, and that the firm have many creditors and were sometimes unable to pay their debts in full, under such circumstances the said E. K. Mohamed Ismail has disappeared.

There is no evidence that either of the partners E. M. Abdulla or E. M. Abdul Hamid have been in Singapore for some years prior to the act of bankruptcy, or for that matter whether they have ever been here.

The question for determination is, are these two partners debtors who have committed an act of bankruptcy upon which adjudication orders can be made against them?

The Bankruptcy Ordinance (Chapter 45) section 3 (3) so far as material enacts:

"The word 'debtor' in this section shall be deemed to include any person, whether a British subject or not,

(c) who though not himself personally within the Colony carries on business by an agent within the Colony."

As a partner he is the agent of his partners for the purpose of the business of the partnership

E. M. Abdulla and E. M. Abdul Hamid, though not in the Colony, carried on business by an agent within the Colony and are therefore